



House of Representatives

General Assembly

File No. 34

January Session, 2001

Substitute House Bill No. 6535

House of Representatives, March 9, 2001

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING INDEMNIFICATION OF COURT APPOINTED HEALTH CARE GUARDIANS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Subsection (k) of section 54-56d of the general statutes is repealed
2 and the following is substituted in lieu thereof:

3 (k) (1) When any placement order for treatment is rendered or
4 continued, the court shall set a date for a hearing, to be held within
5 ninety days, for reconsideration of the issue of the defendant's
6 competency. Whenever the court receives a report pursuant to
7 subsection (j) of this section which indicates that (A) the defendant has
8 attained competency, (B) the defendant will not attain competency
9 within the remainder of the period covered by the placement order, or
10 (C) the defendant will not attain competency within the remainder of
11 the period covered by the placement order absent administration of
12 psychiatric medication for which the defendant is unwilling or unable
13 to provide consent, the court shall set the matter for a hearing no later

14 than ten days after the report is received. The hearing may be waived
15 by the defendant only if the report indicates that [he] the defendant is
16 competent. The court shall determine whether the defendant is
17 competent or [whether he] is making progress toward attainment of
18 competency within the period covered by the placement order. If the
19 court finds that the defendant is competent, [he] the defendant shall be
20 returned to the custody of the Commissioner of Correction or released,
21 if [he] the defendant has met the conditions for release, and the court
22 shall continue with the criminal proceedings. If the court finds that the
23 defendant is still not competent but that [he] the defendant is making
24 progress toward attaining competency, it may continue or modify the
25 placement order. If the court finds that the defendant is still not
26 competent and will not attain competency within the remainder of the
27 period covered by the placement order absent administration of
28 psychiatric medication for which [he] the defendant is unwilling or
29 unable to provide consent, it shall proceed as provided in subdivisions
30 (2) and (3) of this subsection.

31 (2) If the court finds that the defendant will not attain competency
32 within the remainder of the period covered by the placement order
33 absent administration of psychiatric medication for which the
34 defendant is unwilling or unable to provide consent, and after any
35 hearing held pursuant to subdivision (3) of this subsection, it may
36 order the involuntary medication of the defendant if it finds by clear
37 and convincing evidence that: (A) To a reasonable degree of medical
38 certainty involuntary medication of the defendant will render [him]
39 the defendant competent to stand trial, (B) an adjudication of guilt or
40 innocence cannot be had using less intrusive means, (C) the proposed
41 treatment plan is narrowly tailored to minimize intrusion on the
42 defendant's liberty and privacy interests, (D) the proposed drug
43 regime will not cause an unnecessary risk to the defendant's health,
44 and (E) the seriousness of the alleged crime is such that the criminal
45 law enforcement interest of the state in fairly and accurately
46 determining the defendant's guilt or innocence overrides the

47 defendant's interest in self-determination.

48 (3) If the court finds that the defendant is unable to provide consent
49 for the administration of psychiatric medication, and prior to deciding
50 whether to order the involuntary medication of the defendant under
51 subdivision (2) of this subsection, the court shall appoint a health care
52 guardian who shall be a licensed health care provider with specialized
53 training in the treatment of persons with psychiatric disabilities to
54 represent the health care interests of the defendant before the court.
55 Notwithstanding the provisions of section 52-146e, such [person]
56 health care guardian shall have access to the psychiatric records of the
57 defendant. Such [person] health care guardian shall file a report with
58 the court not later than thirty days after his or her appointment. The
59 report shall set forth such [person's] health care guardian's findings
60 and recommendations concerning the administration of psychiatric
61 medication to the defendant including the risks and benefits of such
62 medication, the likelihood and seriousness of any adverse side effects
63 and the prognosis with and without such medication. The court shall
64 hold a hearing on the matter not later than ten days after receipt of
65 such [person's] health care guardian's report and shall, in deciding
66 whether to order the involuntary medication of the defendant, take
67 into account such [person's] health care guardian's opinion concerning
68 the health care interests of the defendant.

69 (4) The state shall save harmless and indemnify any health care
70 guardian appointed by the court pursuant to subdivision (3) of this
71 subsection from financial loss and expense arising out of any claim,
72 demand, suit or judgment by reason of such health care guardian's
73 alleged negligence or alleged deprivation of any person's civil rights or
74 other act or omission resulting in damage or injury, provided the
75 health care guardian is found to have been acting in the discharge of
76 his or her duties pursuant to said subdivision (3) and such act or
77 omission is found not to have been wanton, reckless or malicious. The
78 provisions of subsections (b), (c) and (d) of section 5-141d shall apply

79 to such health care guardian. The provisions of chapter 53 shall not
80 apply to a claim against such health care guardian.

JUD **JOINT FAVORABLE SUBST.**

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Significant Cost

Affected Agencies: Attorney General, State Comptroller

Municipal Impact: None

Explanation**State Impact:**

The bill extends to court appointed health care guardians the same security against financial loss and expense arising out of claims against them that is provided to state officers and employees. By extending this security to more people, the State's legal liability increases. It is likely that this increase would also increase the workload to the Attorney General necessary to litigate claims and the aggregate cost to settle them. It is a workload increase that can be absorbed within existing resources.

The bill creates a potential increase to the State's aggregated cost of legal settlements. This increase could be significant, depending upon the outcome of each claim made. Settlements would be paid out of the General Fund.

OLR Bill Analysis

sHB 6535

AN ACT CONCERNING INDEMNIFICATION OF COURT APPOINTED HEALTH CARE GUARDIANS.**SUMMARY:**

This bill requires the state to indemnify and hold harmless court appointed health care guardians to the same extent and under the same conditions it does for state officers and employees. Health care guardians are licensed health care providers with specialized training in treating people with psychiatric disabilities. The court appoints them to represent the health care interests of criminal defendants when determining whether to order involuntary medication to make them competent to stand trial.

The bill specifies that claims against these providers do not have to be brought to the claims commissioner.

EFFECTIVE DATE: October 1, 2001

INDEMNIFICATION OF HEALTH CARE GUARDIANS

Under the bill, the state must save harmless and indemnify any court appointed health care guardian from financial loss and expense arising out of any claim or suit alleging negligence or other act or omission resulting in damage or injury. The state's duty applies only if a guardian was acting in the discharge of his duties and his acts or omissions were not wanton, reckless, or malicious.

ATTORNEY GENERAL DEFENSE

The attorney general (AG) must defend the guardians under the same conditions as state officers and employees. He must do so in any civil action or proceeding, unless he decides, based on his investigation of the case, that it would be inappropriate and notifies the guardian in writing to that effect.

FEES AND COSTS

The bill requires the state to pay a guardian's legal costs and fees under the same conditions that apply to state officers and employees. The state must do this only when (1) the AG states in writing that the state will not provide an attorney and (2) the guardian is then found to have acted in the discharge of his duties or in the scope of his employment, and not wantonly, recklessly, or maliciously.

The state may pay the guardian's legal fees and costs only after the final disposition of the lawsuit or claim and only in an amount the AG determines is reasonable.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 37 Nay 0